

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION**

IN RE:

SOUTHERN PAIN INSTITUTE, P.C.

Debtor.

CASE NO. 15-11593-WHD

CHAPTER 11

**MOTION FOR AN ORDER AMENDING THE ORDER AUTHORIZING  
EMPLOYMENT OF ACCOUNTANTS AND FINANCIAL ADVISORS**

COMES NOW John A. Thomson, Jr. (the “Trustee”), the duly appointed Chapter 11 Trustee for Southern Pain Institute, P.C., debtor in the above-captioned action (the “Debtor” or “SPI”) and, pursuant to 11 U.S.C. §§ 105, 327 and 328, Rule 2014 of the Federal Rules of Bankruptcy Procedure, and Rule 2014-1 of the Local Rules, herewith submits his “Motion for an Order Amending the Order Authorizing Employment of Accountants and Financial Advisors” (the “Motion”). In support of his Motion, the Trustee respectfully shows this Court as follows:

**I. Jurisdiction And Venue**

1.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

2.

This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

3.

Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4.

The statutory bases for the relief requested herein are i) Sections 327 and 328 of Title 11 of the United States Code (the “Bankruptcy Code”); ii) Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and iii) Rule 2014 of the Local Rules for the United States Bankruptcy Court for the Northern District of Georgia (the “Local Rules”).

## **II. Background**

5.

On July 24, 2015 (the “Petition Date”) the Debtor commenced this voluntary case (the “Case”) by the filing of petition for relief under Chapter 11 of the Bankruptcy Code.

6.

On February 24, 2016, the Office of the United States Trustee appointed the Trustee as Chapter 11 Trustee for SPI in order to manage SPI’s affairs and determine whether it was feasible and appropriate for SPI to reorganize.

7.

The Trustee continues in possession of SPI's property, and is in the process of liquidating SPI's business pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

8.

On March 4, 2016, the Bankruptcy Court entered its "Order Authorizing Employment of Accountants and Financial Advisors" (the "Moore Colson Order") [Doc. 83], wherein the Court authorized the Trustee to retain Moore Colson & Company, P.C. ("Moore Colson") as his accountants and financial advisors during this Chapter 11 Case.

9.

The Moore Colson Order authorized the Trustee to retain Moore Colson to do a number of separate functions. The Moore Colson Order did not, however, specifically authorize the Trustee to utilize Moore Colson as a broker to sell SPI's assets in the event that it became necessary to liquidate SPI's medical practice.

### **III. The Liquidation Of SPI's Assets**

10.

On or close to April 15, 2016, the Trustee learned that certain third-party administrators for the United States Medicare program had suspended any further

reimbursements to Dr. Anthony Clavo or SPI for services performed on patients insured by Medicare and Medicaid.

11.

Since Medicare/Medicaid patients comprised approximately 43% of SPI's patient base, it quickly became apparent to the Trustee that SPI's cash flow, and thus gross revenues, were going to decrease precipitously.

12.

The Trustee determined that SPI's cash flow from all sources would not be sufficient to sustain SPI's medical operations going forward. At that time, the Trustee began to consider whether and to what extent he could sell some, or all, of SPI's practice as a going concern.

13.

The Trustee had no experience with the processes and procedures necessary to effectively market and sell a medical practice. Further, the Trustee had no contacts in the medical community that could expose SPI's practice and assets to the market.

14.

John Reidelbach is a medical practice services expert affiliated with Moore Colson. Prior to the Trustee reaching the conclusion that he would either have to sell or shut down SPI's practice, Mr. Reidelbach had assisted the Trustee in i)

assessing the finance stability of SPI, ii) addressing the gross inadequacies in SPI's general ledger system and receivables accounting, and iii) beginning concentrated efforts to collect SPI's outstanding accounts receivable.

15.

When SPI's revenues dropped, the Trustee realized that he would have to move quickly to market and sell some, or all, of SPI's practice or he would be forced to shut down SPI's practice. If the Trustee shut down SPI's practice, the Estate would lose any going concern value associated with SPI's practice. Accordingly, the Trustee enlisted Mr. Reidelbach, who was already affiliated with Moore Colson and already employed under the Moore Colson Order, to assist with the marketing of SPI's practice assets.

16.

In light of the highly specialized nature of SPI's business, the Trustee required the services of a skilled and experienced professional who i) could evaluate the nature, strength and market value of SPI's medical practice; and ii) had the requisite contacts in the local medical community to market SPI's practice. Mr. Reidelbach provided this level of expertise.

17.

Since on or about May 1, 2016, Mr. Reidelbach served as a broker to sell SPI's practice. He provided marketing and due diligence services to the Trustee

and the SPI estate. Those services included: (a) drawing on his connections in the local medical community to locate qualified buyers for SPI's assets; (b) interacting with prospective buyers and facilitating their due diligence process; (c) negotiating a Letter of Intent with Concordia Anesthesiology, Inc. ("Concordia") that defined the general terms under which Concordia would purchase substantially all of SPI's assets from the Trustee; (d) negotiating the terms of an Asset Purchase Agreement (the "Concordia APA") with Concordia; and (e) subsequent to the execution of the Concordia APA, providing due diligence to additional potential qualified buyers in advance of a proposed auction of SPI's assets.

18.

As a direct result of Mr. Reidelbach's efforts to market SPI's medical assets, on June 3, 2016, the Trustee entered into the Concordia APA.

19.

On June 6, 2016, the Trustee filed an "Expedited Motion to Approve the Sale of Substantially all of the Debtor's Assets Free and Clear of Liens, Claims and Encumbrances Pursuant to 11 U.S.C. § 363" [Doc. 118] (the "Sale Motion"). The Court set a hearing on the Sale Motion for June 30, 2016 at 2 p.m. [Doc. 126].

20.

On June 30, 2016 the Court entered its "Order Authorizing and Approving (A) Sale of Property Free and Clear of Liens, Claims, and

Encumbrances; (B) Transfer of any and all Claims, Liens, Encumbrances and Interests in Sale Assets to Proceeds of Sale; (C) Granting Related Relief” [Doc. No. 143], wherein it authorized the Trustee to complete the sale of the assets associated with SPI’s Peachtree City office (the “PTC Assets”) to Concordia in accordance with the Concordia APA (the “Sale Transaction”). As a result of the Sale Transaction, the Trustee recovered an additional \$300,000.00<sup>1</sup> for the Estate that would not have otherwise been available had he been unable to sell the PTC Assets to Concordia as a going concern.

**IV. The Commission Due To Moore Colson From  
The Sale Of The SPI Assets**

21.

In consideration of Reidelbach’s services, and subject to the Court’s approval, the Trustee has agreed to pay Moore Colson a commission (the “Commission”) which will be computed based on five percent (5%) of the \$300,000.00 gross sales price of SPI’s assets, or \$15,000.00. This five percent amount is the usual, ordinary and customary fee paid to brokers of medical practices in similar-sized transactions.

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<sup>1</sup> The Trustee recognized net proceeds of approximately \$247,000.00 after the payment of certain rent cures due for SPI’s premises and the premises of SPI’s consolidated debtor, Laginappe, LLC. From that amount, the Trustee will pay certain post-petition administrative claims, including final salaries due to the employees.

22.

Moore Colson's engagement as a broker is somewhat outside the specified scope of its engagement as financial advisor and accountant, although a natural adjunct to the services that Reidelbach was performing under the Moore Colson Order prior to the Trustee's decision to market SPI's practice. Out of an abundance of caution, and to insure transparency with the Sale Transaction and disbursement of proceeds from same, the Trustee hereby seeks to amend the Moore Colson Order as outlined in greater detail below.

#### **V. Relief Requested**

The Trustee is requesting, pursuant to sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rule 2014, the entry of an order (the "Amended Moore Colson Order") that i) formally expands the scope of Moore Colson's services to include acting as the Trustee's broker in connection with the Sale Transaction; and ii) authorizes the Trustee to pay to Moore Colson the Commission.

#### **VI. Argument And Citation Of Authority**

Section 328(a) provides, in relevant part, that a debtor or trustee

...with the court's approval, may employ or authorize the employment of a professional person under section 327 ... on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingency fee basis.



11 U.S.C. § 328(a). Numerous courts have recognized that Congress intended Section 328(a) to enable debtors to retain professionals pursuant to specific fee arrangements that could be determined at the time of the court's approval of the retention, subject to review if the terms are found to be inadequate or inappropriate in light of "developments not capable of being anticipated at the time of the fixing of such terms and conditions." *See Donaldson, Lufkin & Jenrette Sec. Corp. v. Nat'l Gypsum Co. (In re Nat'l Gypsum Co.)*, 123 F.3d 861, 862-63 (5<sup>th</sup> Cir. 1997); *Henry A. Leonard & Co. v. United States Trustee (In re River Foal, Inc.)*, 161 B.R. 568, 569 (Bankr. S.D.N.Y. 1993).

**A. Factors Justifying The Commission**

The Commission that the Trustee seeks to pay to Moore Colson in connection with the Sale Transaction is reasonable in light of (a) the unique nature of the services that Reidelbach and Moore Colson were able to provide in connection with the marketing and sale of the PTC Assets, (b) the unique knowledge that Reidelbach was able to bring to the Sale Transaction, which greatly assisted the Trustee in appropriately valuing the PTC Assets and negotiating the Concordia APA; c) accepted industry norms with regard to brokerage fees for the sale of medical practices; and (d) market rates charged for comparable services both in and out of Chapter 11.

The Trustee negotiated the terms of the Commission with Reidelbach and Moore Colson in good faith and at arms' length. The Commission is a true reflection of the Trustee's evaluation of the value that Reidelbach and Moore Colson brought to the Sale Transaction, and thus the Estate. Given the specialized industry knowledge that Reidelbach used to bring about the Sale Transaction, the ultimate benefit to SPI's estate from Moore Colson's services could not be measured solely by a calculation based on the number of hours that Reidelbach expended in the performance of such services.

#### **B. Retroactive Effect**

Once the Trustee determined that he could no longer operate SPI indefinitely, he needed to move extremely quickly to engage a broker and market the practice. When the Trustee's relationship with Reidelbach essentially morphed into the role of broker for the PTC Assets, there was little time to delay Reidelbach's efforts to begin marketing, which occurred at or about May 1, 2016. The Trustee requests that this motion be granted retroactively to that date in order to allow Moore Colson to receive the Commission for the services rendered commencing on May 1, 2016 and continuing until the entry of an Order approving the employment of Moore Colson.

WHEREFORE, the Trustee prays for the entry of an Order as follows:

- (a) Amending the Moore Colson Order to authorize Moore Colson to act as a broker for the PTC Assets, as set forth hereinabove;
- (b) Authorizing the Trustee to pay Moore Colson a five percent (5%) commission on the gross sales price from the Sales Transaction, or \$15,000.00; and
- (c) For such other and further relief as is just and proper.

Dated this \_\_\_\_\_ day of July, 2016.

**COHEN, POLLOCK, MERLIN & SMALL, PC**

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By: /s/ Benjamin S. Klehr  
Benjamin S. Klehr  
Georgia Bar No. 487931

**Counsel for John A. Thomson, Jr., as  
duly appointed Chapter 11 Trustee for  
Southern Pain Institute, P.C.**

UNITED STATES BANKRUPTCY COURT  
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**CERTIFICATE OF SERVICE**

I, John A. Thomson, Jr., hereby certify, under penalty of perjury, that on June 17, 2016 I caused copies of **Motion for an Order Amending the Order Authorizing Employment of Accountants and Financial Advisors** filed in this bankruptcy matter by First Class U.S. Mail, with adequate postage prepaid, on the persons or entities at the addresses listed below and as indicated in **Exhibit A**:

Southern Pain Institute, PC  
1975 Hwy. 54 W  
Suite 100  
Peachtree City, GA 30269

Jeneane Treace, Esq.  
Office of the United States Trustee  
362 Richard Russell Federal Building  
75 Ted Turner Drive, SW  
Atlanta, GA 30303

Eric. E Thorstenberg, Esq.  
6065 Roswell Road  
Suite 621  
Atlanta, GA 30328

This 15th day of July, 2016.

JOHN A. THOMSON, JR., CHAPTER 11 TRUSTEE

By: /s/ John A. Thomson, Jr.  
John A. Thomson, Jr.  
Georgia Bar No. 706760  
Chapter 11 Trustee for Southern  
Pain Institute, P.C.

Cohen Pollock Merlin & Small, P.C.  
3350 Riverwood Parkway  
Suite 1600  
Atlanta, GA 30339  
(770) 858-1288

**Exhibit A**

Regions Financial Corporation Attn: Tiffini Foster 1900 5th Ave N Birmingham, AL 35203-2610	DeLage Landen Financial Services, Inc. c/o Timothy M. Curtin Esq. 2964 Peachtree Rd NW # 200 Atlanta, GA 30305-2119
SNH Medical Office Properties Trust c/o Rubin Lubin, LLC 3145 Avalon Ridge Place, Suite 100 Peachtree Corners, GA 30071	Blue Cross Blue Shield of GA 3350 Peachtree Rd NE Atlanta, GA 30326-1039
Wells Fargo c/o Smith Gambrell & Russell 1230 Peachtree St NE Atlanta, GA 30309-3574	McKesson Medical Surgical 8741 Landmark Rd Richmond, VA 23228-2801
eLab Solutions Corporation c/o Keith S. Anderson, Esq. 1819 5th Ave N Birmingham, AL 35203-2120	ALE Enterprise, LLC Attn: Anyer K. Bellomoraes 180 Shamrock Industrial Blvd Tyrone, GA 30290
CAN Capital Attn: Henry Veasley, III, Colls Mgr 2015 Vaughn Rd NW Ste 500 Kennesaw, GA 30144-7831	Regina Falo c/o Delong Caldwell et al 101 Marietta St., Suite 3100 Atlanta, GA 30303
OnDeck Capital 1400 Broadway Fl 25 New York, NY 10018-5225	Christian's Pharmacy 1032 Main St Forest Park, GA 30297-1442

Phillips Medical Capital, LLC 1111 Old Eagle School Rd Wayne, PA 19087-1453	SS Medical Technology Svces., Inc. 2629 Cosmos Drive, NE Atlanta, GA 30345
HTA-Camp Creek III, LLC c/o H Jackson Cotney, Jr., Esq. 800 Kennesaw Ave NW # 400 Marietta, GA 30060-7946	HTA-Camp Creek III, LLC c/o Victor W. Newmark, Esq. 800 Kennesaw Ave NW # 400 Marietta, GA 30060-7946
Fayette Co. Tax Com'r 140 Stonewall Ave W Fayetteville, GA 30214-1520	Fulton County Tax Com'r. Attn: Tonya Brown 141 Pryor St SW Suite 1113 Atlanta, GA 30303-3444
Southern Crescent Personnel 7179 Jonesboro Rd Ste. 101 Morrow, GA 30260-2907	Wells Fargo Bank, N.A. c/o John T. Vian, Esq. Smith, Gambrell & Russell, LLP Promenade, Suite 3100 1230 Peachtree Street, N.E. Atlanta, Georgia 30309-3592
Amazing Charts, LLC 650 Ten Rod Rd Unit 12 North Kingstown, RI 02852-4237	Regions Banks c/o R. Michael Thompson, Esq. c/o Michael B. Pugh, Esq. Thompson, O'Brien, Kemp & Nasuti, P.C. 40 Technology Parkway South, Suite 300 Norcross, Georgia 30092
Emerald Healthcare Management Serv. c/o Maria A. Lanahan Thompson Coburn LLP One U.S. Bank Plaza St. Louis, MO 63104	Phillips Medical Capital, LLC c/o Timothy M. Curtin, Esq. 2964 Peachtree Rd. NW, #200 Atlanta, GA 30305-2119

Internal Revenue Service PO Box 7346 Philadelphia, PA 19101-7346	Rockdale Co. Tax Com'r 969 Pine St. NE Conyers, GA 30012-4503
Ackerman Security Systems 1346 Oakbrook Drive Norcross, GA 30093-2229	Medical Management Associates Attn: Michael Himmelstein 3330 Cumberland Blvd. Suite 200 Atlanta, GA 30339
American Express c/o GC Services LP 6330 Gulfton St. Houston, TX 77081	American Express PO Box 981535 El Paso, TX 79998-1535
Anchor Heating & Air Co. 6556 Adair Pl. Douglasville, GA 30134-1812	AT&T PO Box 105503 Atlanta, GA 30348-5503
Berkeley Research Group, LLC 2200 Powel Street, Ste. 1200 Emeryville, CA 94608-1833	Bioscrip Pharmacy Services Inc. 2795 Charter St. Columbus, OH 43228-4607
McKesson Medical Surgical Attn: Carrie Lloyd 9954 Mayland Drive, Suite 4000 Richmond, VA 23233	Boston Scientific ACCS PAY PO Box Canton, MA 02021-9188
Rockdale Co. Tax Com'r Attn: R.J. Hadley PO Box 1497 Conyers, GA 30012	Castle Med. Laboratory 5700 Highlands Pkwy SE Ste. 100 Smyrna, GA 30082-5142



Emerald Healthcare Management Serv. 7 Arnage Dr. Chesterfield, MO 63005-1357	Delta Community Credit Union c/o Heather D. Bock, Esq. McCalla Raymer, LLC 1544 Old Alabama Road Roswell, Georgia 30076
King & Spalding, LLP PO Box 116133 Atlanta, GA 30368-6133	MD One Services, LLC c/o Kimberly Childs, Esq. 2727 Paces Ferry Rd. SE #1-225 Atlanta, GA 30339-6168
Oldenburg & Stiner, PC 2004 Commerce Dr. N. Ste. 200 Peachtree City, GA 30269-3564	eLab Solutions Corporation Attn: David Vance Lucas 610 Airport Road Suite 200 Huntsville, AL 35801
Phoenix Technology 1194 Buckhead Xing, Ste D Woodstock, GA 30189-4291	SE Medical Systems 1740 Hudson Bridge Rd. Ste. 1114 Stockbridge, GA 30281-6331
Internal Revenue Service Attn: B. Peterson 401 W. Peachtree Street NW M/S 334-D Atlanta, GA 30308	Stericycle, Inc. PO Box 6582 Carol Stream, IL 60197-6582
Stericycle, Inc. c/o A.R.M. Solutions, Inc. PO Box 2929 Camarillo, CA 93011-2929	Weyant Enterprises, Inc. d/b/a Southern Signal 855 Marathon Pkwy Ste. 2 Lawrenceville, GA 30046-2911

Weyant Enterprises, Inc. c/o Cantley Atlanta Law Group PC 1180 W. Peachtree St. NW #2450 Atlanta, GA 30309-3484	Foot Pain, LLC c/o Parkside Mgmt 1100 Commerce Dr. Ste A Peachtree City, GA 30269-3535
Anthony T. Clavo 1930 W. Wesley Rd. NW Atlanta, GA 30327-2022	